IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 618 OF 1997

Smt.Pariksha Dattatraya Vartak... .....
Petitioner
V/s
The President/Secretary, Barve Education Society,
Vasai & Ors..... .....
Respondents.

Office Notes, Office Memoranda of Coram, appearances Court's orders or directions and Registrar's orders.) Court's or Judge's Orders

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Mr.Shaikh Nasir Masih, Adv. for the petitioner.

Advocate for respondents 1 & 2 absent.

Mr.M.H.Solkar, AGP for Respondent No.3.

CORAM: A.P. DESHPANDE, J.

8.3.2007

PC:

The petitioner challenges the legality and validity of the judgment and order passed by the School Tribunal, Nashik dismissing the appeal filed by her calling in question the action on the part of respondent in terminating her service. The case of the petitioner is that she was appointed as Assistant Teacher with

effect from commencement of academic sessions 1992-93 and at the time of her initial appointment she was a trained teacher eligible for being appointed as such. It is further case of the petitioner that though she was appointed, no appointment order was issued. However there are various appointment orders placed on record of the Tribunal issued in response to the applications made by the petitioner which goes to indicate that the said subsequent appointments commencing from 2.1.1993 onwards were appointments for broken period of short durations and the petitioner was appointed on each occasion in a leave vacancy on account of some employee going on leave. The Tribunal after considering the material on record which is in the form of appointment orders, applications made by the petitioner, the approval of orders issued by the Education Officer, has reached a finding of fact that the petitioner was appointed in the leave vacancies and has not served in a clear vacancy in a permanent post. Having found that the petitioner has worked in leave vacancy the Tribunal rejected the petitioner's submission that the petitioner is entitled to be treated as deemed confirmed employee on account of rendering two years' satisfactory

service.

2. The learned counsel for the petitioner has strenuously canvassed that the very first appointment of the petitioner was in a clear vacancy in a permanent post and the Management had not then issued appointment order. He further points out that barring the first appointment order all other appointment orders are placed on record by the Management, whereas neither the first appointment order nor the approval granted by the Education Officer to that appointment has been filed on record. The learned counsel for the petitioner in these facts and situation submits that adverse inference ought to have been drawn by the Tribunal against the respondent for withholding the material documents which throw light on the nature of appointments of the petitioner made for the first time at the commencement of academic session 1992-93. What is relevant to note is that the petitioner had accepted the temporary appointment for short durations in the leave vacancies from 2.1.1993. Prior to this date the petitioner had hardly put in six months' service, assuming to be in a clear vacancy. All other appointment orders which for the period commencing from 2.1.1993 till

the end of academic sessions 1993-94 undoubtedly reveal that the petitioner by accepting the said temporary appointments has clearly waived whatever right was accrued in the petitioner by virtue of first appointment order. So far as the last order of appointment is concerned, issued prior to termination of the petitioner, the management claimed that the said appointment was on part time basis and temporary one. A finding yet again has been recored by the Tribunal against the petitioner on that count. In the facts of the present petition it is not possible to reach a conclusion that the petitioner has completed two years of service in a clear vacancy in a permanent post. For the obvious reasons that from January, 1993 onwards all the appointment orders unequivocally mention that the appointment is in the leave vacancy and approval orders as well approve the said appointment for short duration of broken period in leave vacancy. If this be the position, the judgment and order passed by the Tribunal cannot be faulted with.

3. Learned counsel points out that the Tribunal has made uncalled for observations and branded the petitioner as lier. He submits that the said observation need to be expunged. In the

facts of the present case I am of the clear view that the said observation is wholly uncalled for and I hereby expunge the same from para 6 of the judgment of the Tribunal.

4. Since there is no merit in the petition the petition fails and is dismissed. Rule discharged.

8.3.07.